

CALIFORNIA COASTAL COMMISSION

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**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval

APPEAL NUMBER: A-5-PLV-00-417

APPLICANT: Playa Vista Capital, LLC (Playa Capital Company LLC)

PROJECT LOCATION: Culver Boulevard, between Lincoln Boulevard and the Marina Freeway, Playa Vista, City of Los Angeles (Los Angeles County)

PROJECT DESCRIPTION: Construction of modified and new ramp connections between Lincoln and Culver Boulevards, widen the southerly half of Culver Boulevard between Lincoln Boulevard and the Marina Freeway to provide an additional eastbound lane, widen and improve grade level connections between Culver Boulevard and Marina Freeway, drainage, lighting and landscaping. The project will add 38 to 41 feet of pavement to the 34 to 37 foot wide road, and additional area to the connections to the Marina freeway, where the finished road may be as much as 104 feet wide. The project will require 23,000 cubic yards cut and fill.

APPELLANTS: Coalition to Save the Marina, Ballona Wetlands Land Trust and Wetlands Action Network

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission find that the City's approval of the locally issued coastal development permit raises **substantial issue** with the marine resource (Water Quality) and habitat policies of the Coastal Act. The proposed project is a road-widening project that is required in the certified LUP.

EXECUTIVE SUMMARY

The road widening is required as mitigation for the part of the Playa Vista project that: (a) is approved by the City; (b) is under construction; and (c) is located outside the Coastal Zone. The Commission approved this road widening (and associated widening of Lincoln Boulevard) in 1995 (5-95-148) but that permit has expired. The present 34-to 37-foot pavement would be widened by approximately 38 to 41 feet to provide turn pockets and an additional lane. The dedicated right-of-way would be increased from 65 feet to 83 feet along most of the right-of-way (the Marina Freeway connection involves a somewhat wider right-of-way reflecting the required ramp width of 104 feet.) The existing ramp that connects eastbound Culver Boulevard with northbound Lincoln Boulevard would be replaced with two ramps. These ramps would be built with a wider turn radius than the existing ramp in order to be consistent with modern highway standards. The new ramp would connect northbound Lincoln with eastbound Culver Boulevard and would connect westbound Culver Boulevard to northbound Lincoln Boulevard. The project also includes more generous at-grade ramps to connect Culver Boulevard to the Marina Freeway.

The appellants have identified a 0.19-acre area within the project footprint that supports mulefat, a wetland facultative plant. They also assert that the runoff from this development will impact areas that the Department of Fish and Game and the Corps have identified as wetlands. Two and a half acres of state-delineated wetlands do exist within the 69-acre site, known as Area C. These delineated wetlands are not located within the footprint of the proposed road, and in fact are located north of the road, adjacent to the northerly property line, while the widening is planned to occur on the south side of the road. The runoff from the widened road would be directed to Ballona Creek, which is located south of the road.

Parts of the project are located in the vicinity of two registered archeological sites (LAN 54 and SR11). The Commission has approved the applicant's archaeological investigation plan, with conditions (5-98-164 Playa Capital.) The appeal raises issues about possible destruction of these sites. The permit approved activities planned in the Coastal Zone on the basis a 1991 Programmatic Agreement among the US Army Corps of Engineers, Los Angeles District, the Advisory Council on Historic Preservation and the California State Historic Preservation Officer that addressed all 17 sites on the property. The Programmatic Agreement requires investigation of sites on the property before any grading occurs in the area of any site. Permit 5-98-164 requires that the Executive Director be informed if artifacts or human remains are discovered to determine whether the recovery (or reburial) can occur or whether the proposed actions need Commission concurrence.

Finally after the Commission approved the Playa Vista Land Use Plan in 1986, geological investigations conducted on behalf of the City have revealed that in some portions of Area D, which is adjacent to this site, there is measurable soil gas, thermogenic methane. In the same report, the consultant identified an inactive potential fault extending through this

area and Area D just north of Lincoln Boulevard. The appellants assert that the Commission should examine these issues as they pertain to the first phase of the project and to this area, Area C and to roads and other unenclosed surface structures within it. The staff concurs that the presence of methane is a factor that will be relevant to the Commission's consideration of future development in Area C. However, the Commission finds that the gas is unlikely to affect the proposed road improvements because a road is not an enclosed structure and cannot act to concentrate methane. The Commission has no power to require reconsideration of projects that are located outside the Coastal Zone and therefore, the Playa Vista development occurring outside the coastal zone is not under review.

The Commission will consider its own permit for this road under the terms of Section 30601 (the dual permit provisions of the Coastal Act). Because many of the issues raised by the appellants have been addressed in the City's action and others are outside the Commission's jurisdiction, staff recommends that the Commission find that this appeal raises no substantial issue concerning the consistency of the City permit with the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS:

1. City of LA CDP No. 95-03 (August 1995), extended (October 1997), currently expired;
2. State CDP No. 5-95-148 (January 1996), extended (October 1997), currently expired;
3. City of LA CDP No. 00-3B (subject appeal)
4. First Phase Project for Playa Vista, Final EIR SCH # 90010510) –EIR No 90200-Sub (c)(CUZ)(CUB)
5. Mitigated Negative Declaration--Playa Vista Plant Site (MND# 950240 (SUB) & Addendum to the EIR for the first Phase Project for Playa Vista --August 1995
6. City of Los Angeles Local Coastal Program, Land Use Plan for Playa Vista (Section C4);
7. Coastal Development Permits: 5-91-463, 5-95-148, permit waiver 5-00-139, 5-91-463, 5-98-164, A-5-PDR 99-130/5-99-151
8. City of Los Angeles Bureau of Engineering Staff Report, no 95-03 –August 2, 1995
9. LADOT Inter-departmental correspondence --Amendment of Initial Traffic Assessment and Mitigation Letter dated September 16, 1992 --Revised May 24, 1993:
10. Memorandum from the City Engineer dated May 10, 2000 –Public Works review of ETI report titled “Subsurface Geo-chemical Assessment of Methane Gas Occurrences” for the Playa Vista project -- file 1996-092;
11. Subsurface Geotechnical Assessment of Methane Gas Occurrences. Playa Vista First Phase Project. By Victor T. Jones, Rufus J. LeBlanc, Jr., and Patrick N. Agostino, Exploration Technologies, Inc., April 17, 2000. [Also referred to as the Jones Report or “the ETI report”]
12. Memorandum: Culver Boulevard Widening Project and Potential Soil Methane Hazards, Mark Johnsson, Senior Geologist, California Coastal Commission

13. Methane Potential Hazard Zones”, Department of Building and Safety, City of Los Angeles, “Memorandum of General distribution, #92, March 19, 1991.
14. Memoranda: Department of Fish and Game, December 1991 relating to extent of wetlands in Playa Vista.
15. CCC Memorandum dated March 5, 1998 re Volume II Preliminary Working draft EIS/EIR Existing Conditions –Playa Vista:
16. Facsimile: March 27-2000 Jurisdictional Determination, final delineation, Playa vista Ballona Wetlands
17. Palms, Mar Vista Del Rey District Plan, City of Los Angeles General Plan –Playa Vista Area C Specific Plan;
18. City of Los Angeles City Council: Conditions of Approval, Vesting Tentative Tract Map 49104 (As Revised December 8, 1995)
19. City of Los Angeles City Council: Conditions of Approval, Vesting Tentative Tract Map 52092 (December 8, 1995)
20. Agreement in Settlement in Litigation in the 1984 case of Friends of Ballona wetlands, et al. v. The California /Coastal Commission, et al.,/Case No. C525-826
21. Programmatic Agreement among the US Army Corps of Engineers, Los Angeles District, the Advisory Council on Historic Preservation and the California State Historic Preservation Officer, regarding the implementation of the Playa Vista Project, 1991.
22. Wetlands Action Network, Ballona Wetlands Land Trust and California Public Interest Research Group v. the United States Army Corps of Engineers.
23. Judge Lew, Federal District Court, June 1998, summary judgement in Wetlands Action Network, et al. v. United States Army Corps of Engineers, above.
24. Davis and Namson, Consulting Geologists, “An Evaluation of the Subsurface Structure of the Playa Vista Project Site and Adjacent Area, Los Angeles CA,” November 16, 2000.
25. Group Delta Consultants, “Geotechnical Investigation of Proposed Roadway Improvements for Culver Boulevard, Playa Vista Development, Los Angeles CA” June 9, 2000.
26. Camp, Dresser and McKee, “Report of Sampling and Analysis of Soil Gas for Methane Phase 2 Portion of Playa Vista,” CDM Project 10610-30928.RT.RPT, November 2, 2000

APPEAL PROCEDURES

Section 30600(b) allows a local government to assume the authority to issue coastal development permits within its jurisdiction before certification of its local coastal program. The City of Los Angeles issues coastal development permits under this Section of the Coastal Act. The standard of review on appeal of a coastal development permit issued under Section 30600(b) is Chapter 3 of the Coastal Act. Sections 13302-13319 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits prior to certification of a LCP.

After a final local action on a coastal development permit issued pursuant to Section 30600(b) of the Coastal Act prior to certification of the LCP, the Coastal Commission must be noticed within five days of the decision. After receipt of a notice, which contains all the required information, a twenty working day appeal period begins. During the appeal period, any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Section 30602). Section 30621 of the Coastal Act states that a hearing on the appeal must be scheduled for hearing within 49 days of the receipt of a valid appeal. The appeal and local action are analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act (Section 30625(b)(1)). If the Commission finds substantial issue, the Commission holds a new public hearing to act on the coastal development permit as a de novo matter.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project.

The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the

substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

Section 30601 establishes that, in addition to a permit from local government pursuant to subdivisions (b) or (d) of Section 30600, a coastal development permit shall be obtained from the Commission for all major public works projects, for developments located within 100 feet of any wetland, estuary or stream, or located between the first public road paralleling the sea and the sea. The project is a major public works project, costing in excess of one hundred thousand dollars. This road-widening project is also located between Culver Boulevard, a public road, and the Ballona Channel, which because it is subject to tidal action, is regarded as an arm of the sea for purposes of Section 30601. Finally the ramps are located within 100 feet of Ballona Creek, a tidal estuary. If the Commission finds this appeal raises substantial issue with the local government's action, the de novo matter will be heard in conjunction with the permit filed in accordance with Section 30601. The applicant has submitted this permit request. The number of the "dual permit" for this identical development is 5-00-400 (Playa Capital).

I. APPELLANTS' CONTENTIONS

Appellants, Ballona Wetlands Land Trust, Coalition to Save the Marina and Wetlands Action Network raise the following issues as a basis for their appeal:

1. There is now substantial evidence of new significant impacts that were not identified in the EIR.
 - A. Methane and toxic gas contamination of Phase One of Playa Vista. In June of 2000, the Los Angeles City Council directed the City to convene a special panel to study the extent of toxic oil field gases contamination at the Playa Vista Phase One site to determine if the hazards associated with the contamination can be fully mitigated to ensure human health and safety and environmental protection. The City's own independent peer reviewer, Victor Jones of ETI, Inc., postulates that the toxic oil field gases detected in the soil and groundwater extends into Area C. As of the date of the filing of this appeal, the special panel evaluating the threat to human health and safety and the environment has not concluded its study.

In fact the City of Los Angeles Department of Building and Safety has halted issuance of all new building and grading permits to Playa Vista until the toxic oil field gas study and seismic hazard evaluation is complete and it can be determined that any development of Phase One will not threaten the public's

health and safety. Additionally, the City has put on hold all public subsidies to Playa Capital until such information is garnered.

This information was not known at the time the project permit was approved in 1995 and 1996. Therefore since new information (since phase one approval in 1995-1996) indicates that significant environmental impacts will occur as a result of this Project, the Project must be denied.

B. Geotechnical information.

The April 17, 2000 ETI, Inc., Report referenced herein also documented the discovery of a new fault, tentatively named the Lincoln Boulevard fault. This new information on significant geotechnical impacts warrants a new hearing for this Project. This new information is especially disturbing given that the project is located within an area of high risk for liquefaction.

2. The lead agency did not comply with the California Code of Regulations, Title 14, Article 10, Section 3720 Seismic Hazards Mapping Act.)

The project lies within a seismic hazard zone and accordingly the project must comply with the requirements set forth in the Seismic Hazards Mapping Act. Section 3724 sets forth specific criteria for project approval, which shall apply within seismic hazard zones and shall be used by affected lead agencies in complying with the Act.

3. There is a substantial increase in the significance of previous traffic impacts identified in the EIR.

As (*City*) Staff admits in its addendum to its final report, the LADOT did not consider the cumulative impacts of Costco, Regatta, GTE, LAX expansion and the 500-unit development at Lincoln and Fiji Way in Marina del Rey when it recommended these transportation mitigation measures. As a result of these major projects, there will be substantial increase in the significance of the traffic impacts, when considered cumulatively with Phase One of the Playa vista Project.

4. Marine Environment considerations and Impacts.

The proposed improvements might impact the maintenance and enhancement or restoration of areas of designated marine resources. Contrary to the staff report's contention, there are delineated wetlands within the area, which are restorable. In fact there is a full tidal flow that occurs in Area C, safely harboring thousands of California killifish (*Fundulus californicus*.) The Belding's Savannah sparrow, a State listed endangered song bird, uses the *Salicornia virginica* as a dispersal area and additional foraging are for fledged birds in Area C. In addition a species of special concern, the White-tailed Kite, has been documented in Area C.

Accordingly, this project does not comply with Sections 30230 and 30231 of the Coastal Act. The project will not create a "minor increase in run-off" as the Staff Report asserts, but rather will arguably create significant increase in run-off into Area C. Moreover, modifying the existing storm drains to provide trash screens does nothing to mitigate non "trash" pollution such as heavy metals and other contaminants resulting from the Project.

An EIR/EIS is currently being conducted for Phase Two of the Playa Vista development (including Area C). The project must not be permitted until adequate environmental review is conducted and the environmental impacts associated with the Project analyzed.

5. Ownership of Area C

Area C is owned by the State of California, not Playa Capital. Although Playa Capital currently has an option to purchase the parcel, it has failed to fulfill the requirements of the option agreement and thus the legal enforceability of that option agreement is now in question.

The State Controller's office must be advised of the proposed projects and the lead agency must inquire with the State Controller and the State Lands Commission as to their position on this proposed project. Accordingly, the Project requires a new hearing.

6. Violation of the Clean Water Act.

Associated runoff from this project would violate the Clean Water Act because the applicant has failed to secure a discharge permit under Section 401.

7. Archaeological/Cultural Resources.

This project may impact archaeological and cultural resources.

8. Violation of the Clean Air Act.

Due to release of toxic oil field gases into the atmosphere.

II. LOCAL GOVERNMENT ACTION:

The local government, the City of Los Angeles, issued a coastal development permit with no special conditions, CDP-003B on November 2000, noting that the project was included in the EIR for the first phase Playa Vista project, and that the mitigation measures adopted as part of the EIR for the first phase applied.

III. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a **Substantial Issue** exists with respect to the conformity of the project with the Coastal Act and Public Resources Code Section 30625(b)(1)).

MOTION: *I move that the Commission determine that Appeal No. A-5-PLV-00-417 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-5-PLV-00-417** presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act regarding consistency of a coastal development permit issued under Section 30600(b) with the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and History

The project before the Commission is to (1) add a loop ramp that will connect north bound Lincoln Boulevard to east bound Culver Boulevard, (2) relocate, improve the radius of and widen a second loop ramp that presently connects east bound Culver Boulevard with north bound Lincoln Boulevard, and (3) add a lane to Culver Boulevard on the east side of Culver Boulevard from Lincoln Boulevard to the Marina Freeway, (Route 90), (4) widen and improve the connections between Culver Boulevard and the Marina Freeway and (5) add lighting, drainage and landscaping. Both the Commission and the City approved this identical project in 1995, as CDP 5-95-148. Due to financial difficulties, the applicant did not construct the project and the permit expired. This and related permit 5-99-139W (improvements to Lincoln approved as a waiver in the summer of 1999), are re-applications for the work authorized in CDP 5-95-148, the widening of Lincoln Boulevard and the widening of Culver Boulevard.

The following is the City's description of the project:

"Description of Project:

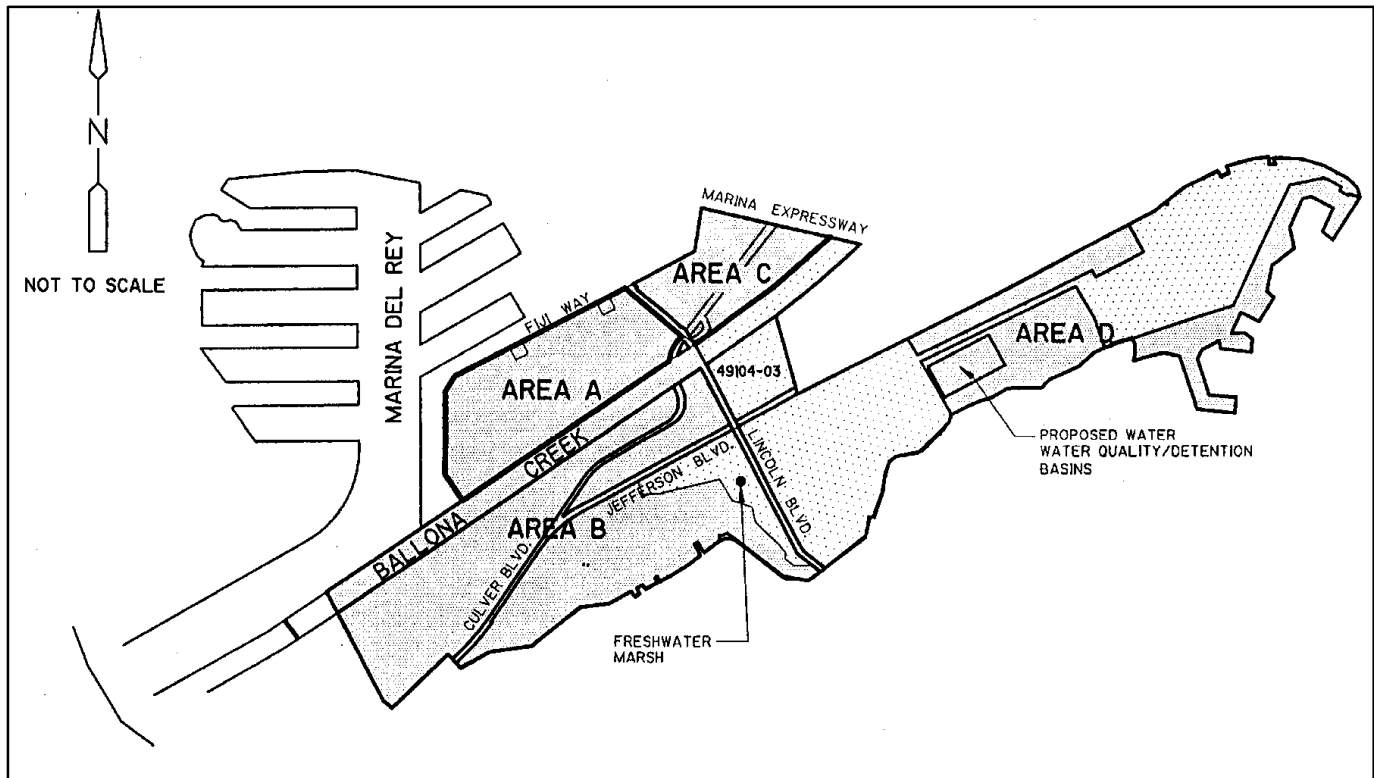
Construction of roadway improvements in the Playa Vista area. The Playa Vista project site is divided into four quadrants by Lincoln Boulevard as the north-south axis, and by the Ballona Channel as the east-west axis. The resulting quadrants have been designated as Areas A, B, C and D (Figure 1. Playa Vista Sub-Areas). The proposed improvements are located in quadrant C, the northeast quadrant, north of the Ballona Channel and east of Lincoln Boulevard, which is within the Coastal Zone.

In the following analysis, "Culver Improvements" refers to the Phase 1A transportation mitigation measures that are on the south side of Culver Boulevard between Lincoln Boulevard and the Marina Freeway. The "Playa Vista Phase I project", or simply "Phase I", is used to refer to the entire scope of activities approved under Vesting Tentative Tract Map 49104 ("VTTM 49104"), including the Culver Improvements. ...

The ... proposed roadway improvement ... consists of the construction of modified and new ramp connections between Lincoln and Culver Boulevards ("Culver Improvements"). The ramps will be in the southeastern quadrant of the interchange. One will provide a connection from eastbound Culver Boulevard to northbound Lincoln Boulevard (replacing an existing ramp), and the other will provide a new connection from northbound Lincoln Boulevard to eastbound Culver Boulevard. Improvements also include: the widening of the southerly half of Culver Boulevard between Lincoln Boulevard and the Marina Freeway to provide an additional eastbound lane; construction of at-grade improvements to the Marina Freeway on and off ramps at the intersection of Culver Boulevard, and public street appurtenances such as storm drains and street lights. " (City of LA CDP-00-3B Staff report)

UNDERLYING PROJECT:

The underlying project is the Playa Vista development, a planned community proposed to



be located on approximately 1037 acres located in the Ballona gap, south of Venice and north of Westchester. The 1037 acre total includes the acreage of the Ballona Channel, some dedicated road areas, and some areas of bluff face located adjacent to Area D. The project development area, not including these bluff faces and channels consists of the following sub-areas: Area D, 406 acres, is located outside the coastal zone.

Approximately 593 acres, 193.06 acres of it wetland, is located inside the Coastal Zone. These areas include Area A, (139 acres), Area B (385 acres); and Area C, (69 acres) where the present project is located. See **Figure 1. Playa Vista Sub-Areas, above**

1. Background

The existing Ballona Wetlands are remnants of a much larger wetland system that formerly covered approximately 1,750 acres. However, a change in course of the Los Angeles River, construction of the Ballona Flood Control Channel in 1932, and dredging of the Marina del Rey Small Craft Harbor in the 1960's drastically reduced the size of the marsh to its present state. Urban development in this region also contributed to the significant reduction in the quantity and quality of the Ballona Wetlands. Most of the remaining Ballona Wetlands are no longer in their natural condition having been altered by oil drilling, pipelines, construction of roads, conversion to farm lands, and dredged material disposal.

Through the California Coastal Act's Local Coastal Program (LCP) process, Los Angeles County developed a Land Use Plan (LUP) for the Ballona Wetlands. The plan divided the area into four sub-areas, Areas A, B, C, and D (Area D is outside of the Coastal Zone). In 1984, the Commission certified the LUP with suggested modifications that were eventually accepted by the County. Several years after the completion of the LUP, the City of Los Angeles annexed parts of the County's LCP area, encompassing Areas B and C, into the City. The City developed an LUP, similar to the County's LUP, and in 1986 the Commission certified the LUP with suggested modifications, which were accepted by the City. The City's 1986 LUP identified the appropriate land uses for the areas within its jurisdictions.

In response to the certification of the County of Los Angeles' LUP, and later the City of Los Angeles' LUP, the Friends of Ballona Wetlands, and several other groups, filed a law suit challenging the certification of the coastal land use plan, Friends of Ballona Wetlands, et al v. California Coastal Commission, et al. (Superior Court of the State of California, County of Los Angeles, Case No. 525-826).

In 1989, Maguire Thomas Partners-Playa Vista (MTP-PV) acquired management control of Playa Vista and worked with the parties involved in the lawsuit to resolve the issues raised by the litigation. Subsequently, the predecessor in interest, Maguire Thomas Partners entered into a Settlement Agreement with the Friends of Ballona Wetlands, the City, the County and the Commission. Under the Settlement Agreement, MTP-PV agreed to modify the proposed development and conduct wetlands restoration.

By entering into the settlement, the Commission did not approve the revised development. Instead, the settlement provides a means for full discretionary review with public input of the revised plans by the City, the County and the Commission. The revised plans are still evolving and the City has not sought approval of a revised LUP.

In 1991 the Commission approved a permit for a 26.1 acre freshwater marsh restoration project in Area B [CDP #5-91-463 (Maguire Thomas Partners-Playa Vista)]. It is the first element in the overall wetlands restoration program. Other aspects of the Ballona Wetlands restoration will be brought before the Commission when Commission permitting is required.

The proposed road-widening does not involve any state or federally designated wetlands, including the approximately 16.1 acres that were subject to a lawsuit filed against Corps and the court order halting all construction activities involved in the approximately 16.1 acres of Corps delineated wetlands (see Exhibit 11 pages 5 and 6). The Corps authorized this fill, in part, to authorize the construction of the freshwater marsh, which did involve fill of 8 acres of wetlands. Although the appellants express concern that the new drains installed with the road will drain into these disputed wetlands, the road drains are not designed to discharge into the wetlands, instead, they would discharge into Ballona Creek.

In this appeal, the Commission is solely determining whether the proposed development -- widening of Culver Boulevard and new ramp connections -- is consistent with Chapter 3.

The Commission's determination of Chapter 3 consistency is not tantamount to a decision that any other development proposed for the Playa Vista site shall be constructed. The Commission's action on this appeal, and the related permit application, will not in any way restrict the Commission's exercise of discretion when it reviews development proposed in the future on the Playa Vista site in the coastal zone.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The grounds for an appeal identified in Public Resources Code Section 30602 are that no substantial issue exists as to conformity of the approved development with Chapter 3 (commencing with Section 30200).

The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent the policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The extent to which the local government's decision could prejudice its ability to prepare an LCP that is consistent with the Coastal Act,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **substantial issue** exists for the reasons set forth below.

C. PUBLIC ACCESS ISSUES RAISED BY THE APPELLANTS:

The appellants assert the following:

There is a substantial increase in the significance of previous traffic impacts identified in the EIR.

The appellants contend that the EIR for Playa Vista Phase I (as noted, all traffic generation by Phase 1 is due to development located outside the coastal zone) did not identify all potential traffic generators and therefore the traffic levels after the project may be greater than anticipated. However Playa Vista Phase I identified occasionally, as “The Project” in this appeal is not before the Commission and not subject to the Commission’s review. The road widening and two loop ramps are before the Commission.

The current traffic mitigation measures were based on the City’s assessment of the traffic that would be generated by Phase I of the development, Tract 49104. Tract 49104 includes two areas within Area D, outside the coastal zone. This assessment was based on a model developed by during the preparation of the EIR by Barton Aschman consultants, and later revised in consultation with the City’s traffic engineers and Caltrans. The conclusions made concerning likely levels of traffic were based on the number of units, the number of jobs and other destinations expected from the project in combination with a list of other traffic generators. The model was modified to some extent by taking into account the reduction of internal trips by internal jitneys, by measures to improve transit to the site, and by the contiguity of work sites and homes within the development. The 1993 EIR, modified to account for a sound studio complex in 1995, did take into account numerous projects that were then planned. Some of these projects have been developed, and some have been abandoned. In a recent Kaku inc. update, it was noted that the LAX expansion was included in the initial survey. Present traffic levels are less than predicted, in part because many “pipeline” projects are not yet completed.

Widening of Culver Boulevard and improvement of loop ramps and connectors as approved in this project would not prevent the City from requiring additional improvements to Culver and other streets if the appellants are correct and more traffic is generated than originally presumed in designing these ramps and widening. Improving access to eastbound Culver Boulevard is proposed as a method for directing traffic toward the freeway and off Lincoln Boulevard, which is a major coastal access route. Connecting Culver to north bound Lincoln is viewed by the applicant as improving access to Lincoln. Lincoln Boulevard is a major coastal access route: a major north/south road that delivers commuter traffic, and on weekends, beach goers, to destinations in Santa Monica, Venice, Playa del Rey and the South Bay cities. The new ramp will allow travelers on northbound Lincoln to take Culver Boulevard to the Marina Freeway or farther to the Interstates 405 and 10. The City’s approval of the widening of Culver Boulevard and the addition of ramps and freeway connections does not raise a substantial issue with respect to public access to and along the shoreline.

D. MARINE RESOURCES AND WATER QUALITY.

The appellants make several contentions with respect to marine resources:

1) The proposed improvements might impact the maintenance and enhancement or restoration of areas of designated marine resources. Contrary to the staff report's contention, there are delineated wetlands within the area, which are restorable. In fact there is a full tidal flow that occurs in Area C, safely harboring thousand of California killifish (Fundulus californicus.) The Belding's Savannah sparrow, a State listed endangered song bird, uses the Salicornia virginica as a dispersal area and additional foraging are for fledged birds in Area C. In addition a species of special concern, the White-tailed Kite, has been documented in Area C. Accordingly, this project does not comply with Sections 30230 and 30231 of the Coastal Act.

Sections 30230 and 30231 of the Coastal Act state:

Section 30230.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

IDENTIFIED WETLANDS

The Department of Fish and Game has identified 2.5 acres of wetland in Area C, the area subject to the proposed road improvement. (Exhibit 11). The identified wetland areas constitute a drainage channel (the Marina Storm Drain) that flows into the Marina del Rey and also a patch of Salicornia near the northwesterly corner of the site (Exhibits 9, 10, 11). The drainage channel is an identified Corps wetland. It flows in a culvert under Lincoln Boulevard into a similar channel in Area A that drains, through another culvert into Marina basin. If fish were found on the site, they would reside in this channel that has water. There is no other open water area in Area C. The widened road will not encroach into

either of these identified wetlands; in fact both are north of Culver, while the widening and the proposed ramp improvements are located south of Culver. The proposed street drains are designed to drain into the Ballona Creek and not the Marina Storm Drain or the patch of Salicornia.

OTHER AREAS OF POTENTIAL INTEREST

There is a ±twenty-foot high mound of fill south of Culver Boulevard between Culver Boulevard and Ballona Creek that is occupied by Little League ball fields. West of this mound, and east of the present ramp, there is a depression. This depression supports some vegetation, including introduced weeds and mulefat. Mulefat, (*Baccharis silicifolia*) is a native plant that grows along streams, on the borders of wetlands and in areas that are seasonally wet. It is a wetland facultative plant, which means that it tolerates wet and saturated habitats, but is not dependent on them. It also is found in areas that are not wetlands or stream banks.

Under the Cowardin method of wetland delineation, a method used by the Department of Fish and Game in California, a site is a wetland if one of the following applies:

- 1) the area is periodically covered by shallow water, or
- 2) the soils are hydric (dark soils evidencing long term saturation), or
- 3) the vegetation found in the area is predominately wetland vegetation.

The area in which the proposed road widening is located is a historic wetland that has been altered by fill, by the channelization of Ballona Creek in the 1930's and by the construction of the marina in the 1960's. It is not flooded. The applicant submitted a soils report shows that the soils are not hydric, confirming reports prepared by the previous owner during preparation of the LUP. However, mulefat does appear in wetlands or adjacent to streambeds. In this case, the staff biologist visited the site at the invitation of the applicant. He reported that, under the mulefat, he observed a thick cover of other species of plants. These plants, fennel, chrysanthemum, bristly oxtongue and mustard are weedy species that invade vacant fields. These weedy species were the predominate vegetation on this portion of the site. The staff biologist determined that this patch of mulefat and other species was not a wetland. Nonetheless, the staff biologist determined that the site did have some habitat value. The area in which the mulefat is found is where the fill supporting the ramps will be placed. The mulefat will be removed. The fill of this area without replacement of some vegetation that could provide comparable habitat value does raise an issue of an impact to habitat and loss of habitat values.

After conversations with staff, and its biological consultants, the applicant proposed to replace this area with a 1.1-acre habitat biofiltration basin that will also support some willows and some coastal sage scrub vegetation. This vegetation will provide habitat that is at least the equivalent of the mulefat area that will be removed, and will result in a much larger area with many more native plants than presently exist. It is not a wetland. It will

supply feed, roosting areas and cover to resident birds. Because natives will be used, it will also support native insects, which fennel and mustard do not.

The City has indicated that it can approve this biofiltration basin addition as an immaterial amendment to the applicant's permit. However, the facility is not before the Commission at this time because it is not part of the City's present approval. The absence of mitigation for the native plant mulefat lost raises a substantial issue with the City permit's consistency with Section 30230.

RUNOFF

The appellants also contend:

The project will not create a "minor increase in run-off" as the Staff Report asserts, but rather will arguably create significant increase in run-off into Area C. Moreover, modifying the existing storm drains to provide trash screens does nothing to mitigate non "trash" pollution such as heavy metals and other contaminants resulting from the Project.

The appellants note that the increased road surface will result in increase run off. Run off from streets is typically polluted with grease, oils and other pollutants. The run-off will be directed toward Ballona Creek.

A significant additional area will be paved than is now paved. The applicant notes that the addition of a loop ramp and widening of Culver Boulevard would increase the impervious surfaces in Area C from 2.53 acres to 7.40 acres (including future road areas) of the total project drainage area of 21.3 Acres. Moreover impervious areas result in an increase in the volume and velocity of runoff, due in part to the loss of infiltrative capacity of permeable space. Runoff conveys surface pollutants to receiving waters through the storm drain system.

Pollutants of concern associated with the proposed roadway development include heavy metals (copper, zinc, and lead), oil and grease. Other pollutants commonly found in urban runoff include pesticides, herbicides, suspended solids, floatables, and bacteria.

The receiving waters for the development, Ballona Estuary and Channel are listed on the 303 (d) list of impaired water bodies. According to the California Water Quality Control Board 1998 303 (d) list, the following parameters are causing impairment: Heavy Metals, Pesticides, Chem.A, PCBs, Tributyltin, Trash, Enteric Viruses/High Coliform bacteria counts, toxicity and sediment toxicity.

The applicant's consultant from GeoSyntec, has examined the effect of the proposed development on the receiving waters, in part, relative to these parameters. A thorough discussion is provided in a GeoSyntec Consultants Report entitled "Stormwater System

Water Quality Evaluation Report – Culver Loop Ramp and Widening” dated November 30, 2000, and signed by Eric W. Strecker, Associate GeoSyntec Consultants.

In the plans approved by the City, there is no treatment proposed for this run off other than trash racks. However, as noted above, the City has approved the addition of a vegetated debris basin to the project design, to address this issue, designed by the applicant, which is not yet part of this permit. As now approved by the City, this project raises substantial issue with regard to its conformity with Sections 30230 and 30231.

D. SAFETY OF DEVELOPMENT:

The appellant suggests that the discovery of soil gas, methane, in adjoining area D should be considered with the respect to the safety of the development.

- A.** *Methane and toxic gas contamination of Phase One of Playa Vista. In June of 2000, the Los Angeles City Council directed the City to convene a special panel to study the extent of toxic oil field gases contamination at the Playa Vista Phase One site to determine if the hazards associated with the contamination can be fully mitigated to ensure human health and safety and environmental protection. The City's own independent peer reviewer, Victor Jones of ETI, Inc., postulates that the toxic oil field gases detected in the soil and groundwater extends into Area C. As of the date of the filing of this appeal, the special panel evaluating the threat to human health and safety and the environment has not concluded its study.*

In fact the City of Los Angeles Department of Building and Safety has halted issuance of all new building and grading permits to Playa Vista until the toxic oil field gas study and seismic hazard evaluation is complete and it can be determined that any development of Phase One will not threaten the public's health and safety. Additionally, the City has put on hold all public subsidies to Playa Capital until such information is garnered.

This information was not known at the time the project permit was approved in 1995 and 1996. Therefore since new information (since phase one approval in 1995-1996) indicates that significant environmental impacts will occur as a result of this Project, the Project must be denied.

- B.** *Geotechnical information.*

The April 17, 2000 ETI, Inc., Report referenced herein also documented the discovery of a new fault, tentatively named the Lincoln Boulevard fault. This new information on significant geotechnical impacts warrants a new hearing for this Project. This new information is especially disturbing given that the project is located within an area of high risk for liquefaction.

Section 30253 of the Coastal Act provides:

Section 30253.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

The project before the Commission on appeal is not the underlying Phase I project, which is outside the Commission's jurisdiction. The Commission does not have the ability to review the Phase I project. The relevant issue that the presence of gas raises is whether the potential presence of soil gas in Area C poses a danger to travelers on the proposed road Improvements. (See Exhibits 12-15 for materials on soil gas.)

The materials regarding the soil gas on this and the adjacent site were reviewed by the senior staff geologist. The staff geologist determined that there was not danger of explosion on a road or in a vehicle on the road and that the levels of concentration found on this portion of the site do not pose a hazard or would not prevent the construction of a road, a new lane, or loop connector:

"It appears, [from review of the ETI report and a report on Area C by CDM, cited in the substantive file documents], that no significant methane seeps occur in the area investigated.

Further methane would only be able to attain dangerous levels if it were allowed to accumulate in an enclosed space. No such enclosed space exists beneath the road bed. Any methane escaping from the soil beneath the roadbed would simply move laterally until a free path to the surface was encountered.

Therefore it is my opinion that no explosion hazard exists in association of the widening of Culver Boulevard between Lincoln Boulevard and the Marina Freeway, nor will the construction of a ramp between Culver and Lincoln Boulevards create such a hazard. (Mark Johnsson, Staff Geologist, December, 2000, Exhibit 14)

City building rules only require venting of pavement when there is an area of 5,000 square feet, and that area is located within 15 feet of an enclosed structure. The only structure

under consideration in this appeal is the road and the loop connectors. The road is not adjacent to any enclosed structure. (Exhibits 3 and 5).

The City addressed this issue in its findings on this permit, noting that many streets in the City, notably Wilshire Boulevard are located in areas in which there are methane seeps:

- (6) **Oil/Gas Concerns:** The "recent oil and gas incident" asked about in the public hearing was apparently one of 41 soil borings to depths of 60 to 80 feet made by Playa Vista at the direction of the City in specifically targeted soil areas. At 6 boring sites, enough gas was encountered at depth such that the exhausting gas expelled water, sand and grout. In some of the 6 instances, the expelled material went as high as approximately 40 feet. The exhausting ranged from a few hours to two days.

Staff is aware of and sensitive to concern about methane gas seepage in the Playa Vista area. Exploration Technologies, Inc., (ETI) recently completed a review of historical data about the area and performed extensive sampling in the western portion of Phase 1 (Subsurface Geotechnical Assessment of Methane Gas Occurrences. Playa Vista First Phase Project. By Victor T. Jones, Rufus J. LeBlanc, Jr., and Patrick N. Agostino, Exploration Technologies, Inc., April 17, 2000. [a.k.a. The Jones Report]). ETI did not sample in the area of the street improvements under review here, however they report two exploratory wells have been drilled in vicinity of the proposed loop ramp connection between Lincoln Boulevard and Culver Boulevard. These were Kitselmann Del Rey #1, drilled to a total depth of 2,785 feet and Kitselmann Del Rey #2, drilled to a total depth of 3,434 feet. Both wells were plugged and abandoned as dry holes in 1922. Shallow natural gas was encountered in the wells while drilling at depths of 1,225 feet and 3,434 feet.

Special measures will be taken to intercept and safely vent soil gases away from structures and equipment vaults in the Playa Vista project. However, the street improvements to be constructed under this coastal development permit do not require such measures because the proposed roadway improvements will not require deep excavations likely to conduct dangerous concentrations of gas to the surface nor does the project involve structures designed for human use or occupancy or which would otherwise provide an opportunity for combustible gases to collect and come in contact with a combustion source. Staff notes that the proposed street and storm drain structures are common throughout the City of Los Angeles and have not been associated with oil or gas safety problems even where natural gas seepage to the surface does occur, such as in the Park La Brea area. Because the storm drains are designed for gravity flow, any methane gas that might enter the storm drain system would vent out of the catch basins and dissipate.

The proposed roadway improvements will not require deep excavation and do not involve subsurface structures designed for human use or occupancy. The proposed street and storm drain structures are common throughout the City of Los Angeles and have not been associated with oil or gas safety problems even where natural gas seepage to the surface does occur, such as in the Park La Brea area. (Staff report CDP 003B, City of Los Angeles.)

The Commission finds that the City reviewed this issue carefully with respect to the safety of the road. The City reviewed extensive material that its consultant, ETI, had prepared. Even though safety is an important issue, the locally issued permit raises no substantial issue with respect to conformity with the hazard policies of the Coastal Act.

The appellants also raise an issue of a possible fault identified by the ETI team on Area C:

Geotechnical information.

The April 17, 2000 ETI, Inc., Report referenced herein also documented the discovery of a new fault, tentatively named the Lincoln Boulevard fault. This new information on significant geotechnical impacts warrants a new hearing for this Project. This new information is especially disturbing given that the project is located within an area of high risk for liquefaction.

This suspected fault, if it can be confirmed, was mapped by Jones *et al.* in the area in which the street and loop ramp are located. While Jones (ETI, 2000) suggests that the City might consider setting new structures back from this potential fault, the final recommendations do not include recommend set backs even from enclosed structures. The report recommends only that structures be required to install vents, membranes and collection devices to avoid concentrating methane within enclosed spaces.

Again, the staff geologist reviewed available evidence with respect to the fault. He determined that the existence of the fault was not proven and that, even if it is present, the fault does not raise a significant safety issue with respect to an earth-supported ramp or a road. There are many roads throughout the state that are located on identified or unidentified faults. The Commission finds that widening an existing road on a possible fault does not raise a substantial issue with respect to the hazard policies of the Coastal Act.

Finally, the appellants allege that the project lies within a seismic hazard zone and that accordingly the project must comply with the requirements of the Seismic Hazard Mapping Act (Public Resources Code, Section 2690 et seq. and 14 California Code of Regulations, Section 3720 et seq.). They allege that the project must comply with the specific criteria for project approval which apply within seismic hazard zones and which affected lead agencies are required to employ.

It is true that the proposed road is underlain by liquefiable soils. The soils could, by the estimate of the project geologist, settle 0.6 inches in the event of an earthquake severe enough to liquefy the soils. The draft EIR speculates that in some areas of the site this could be as much as 4 –6 inches. Neither of these reports discusses lateral spreading, which could be a severe problem in the case of structures located in liquefaction zones. Even though Culver Boulevard did not suffer liquefaction damage at the time of the Sylmar Quake or the Northridge quake, other roads in Los Angeles, including the freeway bridges

at La Cienega Boulevard did suffer damage. The project must comply with applicable building standards and earthquake safety standards. The Commission finds that compliance with these standards will provide a reasonable level of public safety and therefore the proposed project does not present an unacceptable risk resulting from liquefaction hazards.

The Seismic Hazard Mapping Act does not apply to this road-widening project. The applicant points out that the Seismic Hazard Mapping Act defines a "project " as either a (i) subdivisions of land and (ii) certain structures for human occupancy. (Public Resources Code Sections 2621.6 and 2693(d)). [The Act also does not apply to alterations or additions to any structure which do not exceed 50 percent of the value of the structure or 50 percent of the existing floor area. (Public Resources Code Section 2693(d)(2))]. The construction of this road and ramp project is neither a subdivision nor structure for human occupancy. Therefore no requirements other than the geologic reports prepared for this road by the applicant and reviewed by the Department of Public Works are required.

Even though the issues of safety to the public are important and warrant review in a full hearing, the Commission finds that the local government considered these matters thoroughly and that the information on which it based its decision was careful and complete. Therefore the Commission finds that the appeal raises no substantial issue with respect to hazards to life and property.

E. CEQA

The appellants note that this Area C is part of the Phase II EIR and only the Phase I EIR has been approved. They ask how any development can be approved in an area that is not evaluated in an EIR. The opponents suggest that approval of a road in this area would eliminate other alternatives that might be considered in Phase II.

The applicant responds that the impacts of these road improvements were analyzed in the first phase EIR as an off-site improvement. Secondly, the applicant notes that a road already exists, the project will simply widen it to 74 to 77 feet (104 feet at the Freeway connection) by adding a lane. The construction of a road in this area does not represent a road extension into an area that presently has no roads.

The opponents raised this issue at City hearings. With respect to this issue, the City findings state:

California Environmental Quality Act.

Segmentation: The environmental effects of the street improvements have not been segmented from those of the Playa Vista development approved by VTTM 49104. The Culver improvements are within Area C, but are approved as Condition No. 118 of VTTM 49104. Thus, they are part of phase I of the development. The Environmental Impact Report (EIR) No. 90-0200, certified by the City Council, evaluated the effects of all

of the First Phase Playa Vista development, including the street improvements and cumulative impacts from other projects

As discussed above, in Section I, Summary, above, under Applicable permits, Permissions and Approvals, an EIR was prepared and certified in 1993 in connection with the City's approval of VTTM 49104, of which these Culver Improvements are a part. The Culver Improvements were previously analyzed in the EIR and approved as part of VTTM 49104. Public comments were submitted at the hearing (verbal) and in writing (one via fax).

In November, 1999, and April 17, 2000, reports on methane and other chemicals were prepared in connection with applications for building and grading permits which were required for the development approved as part of VTTM 49104. Neither the comments nor other information and evidence presented to staff constitutes substantial evidence that there would be new significant impacts or a substantial increase in the significance of any previous impacts identified in the EIR. Therefore, no additional environmental clearance is required under State CEQA Guidelines, in particular Guidelines nos. 15162 *et seq* or Public Resources Code Section 21167. (Staff report CDP-3B, City of Los Angeles)

The Commission notes that the City did address these issues. In addition, the Commission is not empowered to review the compliance of the applicant and the City with CEQA. An appeal is reviewed with respect to the compliance of the development with Chapter 3 of the Coastal Act, and whether the development is the least damaging feasible alternative. The Commission finds that issues raised with respect to compliance with CEQA raise no substantial issue with respect to consistency with Chapter 3 of the Coastal Act.

F. CLEAN WATER ACT.

The appellants assert that the project does not comply with the Clean Water Act:

Violation of the Clean Water Act.

Associated runoff from this project would violate the Clean Water Act because the applicant has failed to secure a discharge permit under Section 401.

Section 401 is a federal act, and assuring compliance with it does not fall into the Commission's jurisdiction. The Commission has found that the project raises a substantial issue with respect to Coastal Act Water Quality policies. A 401 permit is a discharge permit granted in conjunction with a 404 permit that may allow dredge or fill within waters of the United States (A non-navigable stream or wetland). No 404 permit is needed for this road widening because no waters of the United States (federal wetlands) are involved.

The applicant received a Section 404 permit from the Corps of Engineers allowing the fill of federal wetlands elsewhere on this Area C. The mapped federal wetlands are not located within the footprint of this development or of the proposed staging areas. The 404 permit does not apply to this project because this road-widening project does not include any activity in federal wetlands. The Commission recognizes that the 404 permit applying

to other parts of the site has been challenged in litigation and that action is still pending. However, the area in which the road-widening project is proposed is outside federal wetlands, requires no fill of federal wetlands and is not within federal jurisdiction. Therefore, the dispute regarding approval of the 404 permit for Area C is not relevant to consideration of this project.

G. CLEAN AIR ACT.

The appellants assert that a the City, in approving the project was in violation of the Clean Air Act:

Violation of the Clean Air Act.

Due to release of toxic oil field gases into the atmosphere.

The State Air Resources Board regulates air quality.

Section 30414 states:

Section 30414.

(a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district.

(b) Any provision of any certified local coastal program which establishes or modifies any ambient air quality standard, any emission standard, any air pollution control program or facility shall be inoperative.

(c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.

(Amended by Ch. 1246, Stats. 1982.)

The local arm of the State Air Resources Board, the South Coast Air Quality Management District, SCAQMD regulates air quality. Staffers in their enforcement division explain that methane in the concentrations found on this site also do not fall into their purview and are not regulated. As described above, the Commission does not regulate air quality. The

issue of air quality does not raise a substantial issue with respect to conformity of the approved road project with chapter 3 of the Coastal Act.

H. ARCHAEOLOGICAL RESOURCES.

The Coastal Act provides that the Commission shall protect archaeological or paleontological resources consistent with the policies and actions of the State Historic Preservation Officer.

Section 30244.

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

In permit 5-98-164 approved on October 18, 1998, the Commission reviewed a Programmatic Agreement between the applicant and the State Historic Preservation Officer, the Corps, the applicant and representatives of two families of the Gabrielenos regarding exploration of potential archaeology sites. The Gabrielenos (Tongva tribe) have been identified as the most likely descendants of the former inhabitants. Two of these registered sites, (LAN 54 and SR11), are in the vicinity of the planned grading and fill planned in this development.

The programmatic agreement provides for exploration of the sites and for curation of any finds. The sites in this area are shell deposits that include ash colored soils. The coastal development permit authorizing exploration (5-98-164) provides that in the event that resources are found a recovery plan be drafted and provided to the Executive Director. The Executive Director will determine whether the recovery can proceed or whether an amendment to the permit is required. The city staff report reviewed the requirements that had been imposed on the developer with respect to the protection of archaeological and paleontological resources.

The City EIR requires that detailed exploration occur before any grading for any purpose. The programmatic agreement, and the present City permit, requires the applicant to explore the identified sites before work occurs. There are standards for recovery and curation in the programmatic agreement. The State Historic Preservation Officer is party to the agreement. Therefore the locally approved permit raises no substantial issue with regard to the conformity with Section 30244 of the Coastal Act.

I. OWNERSHIP OF AREA C

The appellant asserts that the applicant does not own Area C and therefore has no right to undertake the development.

Ownership of Area C

Area C is owned by the State of California, not Playa Capital. Although Playa Capital currently has an option to purchase the parcel, it has failed to fulfill the requirements of the option agreement and thus the legal enforceability of that option agreement is now in question.

The State Controller's office must be advised of the proposed projects and the lead agency must inquire with the State Controller and the state lands commission as to their position on this proposed project. Accordingly, the Project requires a new hearing.

The Howard Hughes estate (Summa Corporation) transferred Area C to a trust for benefit of the State as part of a tax settlement. The property is owned by the US Trust Company of California NA for the benefit of the State of California. The portion of Area C within which the proposed Lincoln/Culver ramp improvements are to be constructed is covered by an irrevocable offer to dedicate an easement to the City for public road purposes approved by the trustee and also approved by the City Engineer on November 21, 1995. The dedication for the road was signed by the trust company with the permission of the State Controller's office. The City will record the dedication when it accepts the improvements. The U.S. Trust Company has indicated that it consents to construction of the project on the property. The balance of the area within which the Lincoln/Culver ramp improvements are to be constructed is outside of Playa Vista Area C and within a City of Los Angeles owned right-of-way. (Culver Boulevard is a City right of-way. Portions of the loop ramp is already dedicated to the City by the then owner of Playa Vista for purposes of road widening). The City issued a permit for the project, which indicates that it consents to construction of the project on the property.

In response to the appellant's concerns, the State Controller has been added to the notification list for the Commission's hearing on this matter. The appellants allege that Playa Vista has missed deadlines on payments owed to the Controller. The Commission cannot evaluate development based on whether money owed for whatever purpose has been paid. The Commission has no jurisdiction or control over the applicant with regard to contracts between the applicant and other parties, or deadlines, payments, property transfers or other financial matters. The Commission's responsibility is to review all appeals of permits issued under 30600(b) with respect to compliance with Chapter 3 of the Coastal Act.

J. SUMMARY

The Commission finds that the approval of the project by the City raises a substantial issue with respect to the habitat and water resource policies of the Coastal Act. While Playa Vista does support many significant coastal resources of statewide importance, this

particular project will not have a significant effect on coastal resources with two exceptions. These are the impacts of the project on run off to an estuary, Ballona Creek, which provides water to a wetland of statewide importance and the impacts of the project on 0.19 acres of mulefat. The mulefat has habitat value because of its proximity to the Ballona wetland. The mulefat could function as upland support for the bird and animal life on the nearby wetland. The removal of mulefat and other vegetation, and the construction of impervious areas without adequate filtration for chemicals and oils raises a substantial issue with respect to conformity with Sections 30230 and 30231 of the Coastal Act.

The other resources actually affected by the decision were not significant (roadside weeds), or, if significant, (the archaeological deposits) have been addressed in previous permits and conditional approvals by many agencies. All other issues raised by the appellant, though they include issues about which the Commission has been concerned, were dealt with thoroughly and adequately by the City in its analysis of the project. The City based its approval on a thorough analysis of the applicable laws, based on a full examination of the facts, and analyzed these facts with respect to the consistency of the development with the Coastal Act. The development, though part of a much larger project, as approved by the local government is limited in scope and on its impact on coastal zone resources. The widening of this road will not establish a new road in an area that did not have roads and will not affect the land uses that might occur in Area C or that the Commission might wish to approve within this area. The City adequately and completely analyzed the potential hazard issues. The City has demonstrated that the project will assure safety of the public and is not hazardous. While the Ballona wetland is an important wetland of statewide importance this appeal does not raise issues of statewide significance other than water quality and the upland habitat that might support the nearby wetland.